

he failed to answer or respond to the *Complaint*, the SEC sought entry of default, and it was entered in April 2023. Docs. 26, 29. The SEC moved for final default judgment. [Doc. 30](#). The district judge referred the Default Judgment Motion to Magistrate Judge Ramirez, who, in October 2023, recommended that the Default Judgment Motion be denied without prejudice due to the SEC's failure to comply with the Servicemembers Civil Relief Act ("SCRA"). [Doc. 39](#). In November 2023, the district judge issued an order accepting Magistrate Judge Ramirez's findings and recommendation. [Doc. 43](#).

In October 2023, the SEC filed a *First Amended Complaint* containing the same allegations against Kim. [Doc. 40](#), *passim*. The SEC now moves for default judgment.

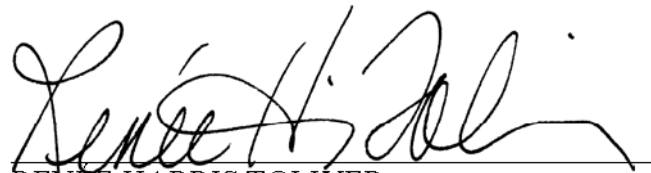
Under [Federal Rule of Civil Procedure 55](#), a default occurs when defendants fail to plead or otherwise respond to a properly served complaint within the time required. [N.Y. Life Ins. v. Brown](#), 84 F.3d 137, 141 (5th Cir. 1996). However, before a party may obtain a default judgment, the Clerk of Court must have first entered a default. *Id.*; [FED. R. CIV. P. 55\(a\)](#). When the plaintiff fails to receive the Clerk's entry of default on the operative complaint before moving for default judgment, a motion seeking default judgment has failed to satisfy Rule 55's requirements and is thus premature. [Bank of New York Mellon Tr. Co. as Tr. for Mortg. Assets Mgmt. Series I Tr. v. Dabney](#), No. 3:18-CV-1606-M-BK, 2022 WL 1528174, at *2 (N.D. Tex. Apr. 14, 2022) (Toliver, J.) (citations omitted), *accepted by*, No. 3:18-CV-1606-M-BK, 2022 WL 1524137 (N.D. Tex. May 13, 2022) (Lynn, C.J.).

Here, the SEC has failed to request and obtain the Clerk's entry of default on the *First Amended Complaint* before moving for default judgment. Although obviously just an oversight, the SEC nevertheless has failed to satisfy a requisite to obtaining a default judgment, rendering the motion *sub judice* "defective." See [Dabney](#), 2022 WL 1528174, at *1-*2 (finding a motion

for default judgment “defective” when the plaintiff failed to request the Clerk’s entry of default on the operative complaint before moving for default judgment) (citations and internal quotation marks omitted).

For the foregoing reasons, *Plaintiff’s Amended Motion for Default Judgement Against Defendant Chol Kim a/k/a Brandon Kim*. [Doc. 53](#), should be **DENIED WITHOUT PREJUDICE AS PREMATURE**.

SO RECOMMENDED on August 20, 2024.



RENEE HARRIS TOLIVER
UNITED STATES MAGISTRATE JUDGE

INSTRUCTIONS FOR SERVICE AND NOTICE OF RIGHT TO APPEAL/OBJECT

A copy of this report and recommendation will be served on all parties in the manner provided by law. Any party who objects to any part of this report and recommendation must file specific written objections within 14 days after being served with a copy. *See* [28 U.S.C. § 636\(b\)\(1\)](#); [FED. R. CIV. P. 72\(b\)](#). An objection must identify the finding or recommendation to which objection is made, state the basis for the objection, and indicate where in the magistrate judge’s report and recommendation the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific. Failure to file specific written objections will bar the aggrieved party from appealing the factual findings and legal conclusions of the magistrate judge that are accepted or adopted by the district court, except upon grounds of plain error. *See* [Douglass v. United Servs. Auto. Ass’n](#), [79 F.3d 1415, 1417 \(5th Cir. 1996\)](#), *modified by statute on other grounds*, [28 U.S.C. § 636\(b\)\(1\)](#) (extending the time to file objections to 14 days).